

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1399 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy No :
of the judgement?
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

GSRTC

Versus

KISHORBHAI SANABHAI PATEL

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR AJAY R MEHTA for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/08/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

Learned Counsel for the appellant seeks
permission to delete name of respondent no.4 from the
present appeal, as he is not a necessary party for the

purpose of deciding issues involved in the appeal. Permission as prayed for is granted. Name of respondent no.4 stands deleted from the present proceedings.

Admitted. Mr. A.R.Mehta, learned Counsel waives service of notice on behalf of the respondents. At the joint request of the learned Counsel appearing for the parties, the appeal is take-up for final hearing today.

By means of filing this appeal under section 173 of the Motor Vehicles Act, 1988, the appellant has challenged legality of judgment and award dated September 14, 1998 rendered by the Motor Accident Claims Tribunal (Auxi.), Vadodara in M.A.C.P. No.1288/92 by which the Tribunal has directed the present appellant and the driver of the bus to pay a sum of Rs. 3,85,000/- as compensation with costs and interest at the rate of 12% per annum from the date of application till realisation for accidental death of Kapilaben Kishorbhai Patel.

2. The accident in question took place on March 28, 1992 at about 1.30 P.M. opposite : Anuradha Building, near three roads of Ajanta Society, Vadodara. On the date of accident, original applicant no.2 i.e. Pritiben Kishorbhai Patel was going towards Experiment School on her cycle and on the said cycle, pillion rider was her mother Kapilaben. She was driving her cycle on the left side of the road at a slow speed, but Mr. Bhupendra Patel, who was driving S.T.Bus bearing registration No.GRS-7614 at an excessive speed, dashed the bus with the cycle and caused accident. Due to said accident, deceased fell down from the cycle and sustained serious injuries on her head. In the accident, her head was crushed and she also received injuries on the right hand. She succumbed to the injuries on the spot. After the accident, her body was removed to S.S.G. Hospital Vadodara for postmortem and a complaint regarding the accident was lodged with the police. According to original applicants, Kapilaben expired because of rash and negligent driving of the bus by its driver and, therefore, they filed Motor Accident Claims Petition No.1288/92 before the Motor Accident Claims Tribunal at Vadodara and claimed compensation of Rs. 4 lacs under different heads from the original opponents.

3. The present appellant contested the claim petition by filing reply at Exh.9 and controverted the averments made in the claim petition. In the reply it was, inter-alia, pleaded that the bus driver was not negligent at all and, therefore, the claim petition was liable to be dismissed. It was also averred that the

claimants had not suffered loss as claimed in the claim petition and, therefore, it should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the Tribunal. In support of their case, the claimants examined applicant no.2 Pritiben Kishorbhai Patel at Exh.20. The applicant No.1 examined himself at Exh.26; whereas on behalf of the present appellant, driver Bhupendrabhai Verdhabhai was examined at Exh.37. Documentary evidence, such as, panchnama of place of occurrence, F.I.R., postmortem notes, books of accounts relating to tailoring work done by the deceased etc. were also produced. On appreciation of evidence led by the parties, the Tribunal held that the accident took place because of rash and negligent driving of the bus by driver Bhupendrabhai. Having regard to the evidence led by the claimants with reference to the income of the deceased, the Tribunal deduced that income of the deceased was Rs. 3000/- per month. After deducting 1/3rd amount, which would have been spent by her for her personal expenses, the Tribunal held that the dependency benefit available to the dependants was Rs. 2,000/- per month. It was found by the Tribunal that at the time of accident, the deceased was aged about 40 years and, therefore, the Tribunal was of the opinion that multiplier of 15 should be applied to the facts of the present case. In the ultimate analysis, the Tribunal has awarded a sum of Rs. 3,60,000/- as dependency benefit to the applicants. The Tribunal has also awarded a sum of Rs.5000/- towards after death ceremony and Rs.20,000/towards consortium and loss of expectation of life. In all, the Tribunal has awarded a sum of Rs. 3,85,000/- with costs and interest at the rate of 12% from the date of application till its realisation as compensation to the original claimants, giving rise to present appeal.

4. Learned Counsel for the appellant submitted that no cogent evidence was led by the original applicants to establish that future income of the deceased would have been Rs.3,000/- per month and, therefore, compensation awarded under the head of dependency benefit should be modified; whereas the learned Counsel for the original applicants submitted that the Tribunal was justified in assessing income of the deceased at Rs. 3,000/- per month and, therefore, the impugned award should not be modified.

5. We have heard the learned Counsel for the parties as well as we have taken into consideration the relevant documents produced by the learned advocates for our perusal. The evidence of applicant no.1- Kishorbhai

Shanabhai Patel recorded at Exh.26 makes it evident that the deceased was doing the work of sewing as well as cooking and preparing eatables like Papad, Mathiya, Pickles etc. and was earning Rs.2000/- per month from the sale of those articles. His evidence also shows that over and above doing the work of sewing and selling eatables, the deceased was also rendering her services to the family members. Under the circumstances, we are of the opinion that the Tribunal was justified in coming to the conclusion that income of the deceased should be assessed at Rs. 1000/- per month. The assertion made by the applicant no.1 that the deceased was doing sewing work etc. is amply born out from the books of accounts maintained by the deceased and produced at Exh.29. Naturally with the passage of time, the deceased would have earned more and, therefore, the Tribunal was justified in taking future rise in income of the deceased. However, having regard to the facts of the case, we are of the opinion that the Tribunal was not justified in holding that the average income of the deceased would have been Rs. 3,000/- per month. On the totality of the facts and circumstances of the case, we hold that the future income of the deceased should have been assessed at Rs. 2700/- per month for the purpose of determining dependency benefit. Out of the said amount, 1/3rd amount would have been spent by the deceased for her personal expenses and, therefore, if a sum of Rs. 900/- is deducted from the future income, the net dependency benefit would come to Rs. 1,800/- per month. Having regard to the facts of the case, we are of the opinion that the Tribunal did not commit any error in applying multiplier of 15 to the facts of the present case. Thus, in our opinion, the original applicants would be entitled to a sum of Rs. 3,24,000/- as dependency benefit. Rest of the award for Rs. 25,000/under the heads of consortium, loss of expectation of life, after death ceremony etc. cannot be said to be excessive in any manner so as to warrant interference of this Court in the present appeal. Thus, in all, the original applicants would be entitled to a sum of Rs. 3,49,000/-, which is rounded off to Rs. 3,50,000/-.

For the foregoing reasons, the appeal partly succeeds. It is held that the original applicants would be entitled to a sum of Rs. 3,50,000/- as compensation with proportionate costs and interest at the rate of 12% per annum from the date of application till realisation. There shall be no order as to costs.

The learned Counsel for the appellant on instructions states that some amount is deposited by the appellant in the Tribunal and rest of the amount shall be

deposited by the appellant as early as possible and preferably within six weeks from today.

(patel)